GSTD 2004/2 - Goods and services tax: Are all supplies made by the entity nominated as the joint venture operator to entities that are participants in the GST joint venture to be treated as if they are not taxable supplies?

Note: Some provisions ruled on in this ruling may have been amended. As a result, you may no longer b
http://ato.gov.au/General/Rulings-and-ATO-view/In-detail/Public-rulings--overview/Changes-to-GST-public-r
to check how this ruling is likely to be affected by the change in the law. (Note added on the 16 July 2010)

This document has changed over time. This is a consolidated version of the ruling which was published c

Goods and Services Tax Determination

Goods and services tax: Are *all* supplies made by the entity nominated as the joint venture operator to entities that are participants in the GST joint venture to be treated as if they are not taxable supplies?

Preamble

This document is a ruling for the purposes of section 37 of the ***Taxation Administration Act 1953****. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

1. No. Not all supplies made by an entity that is nominated as the joint venture operator of a GST joint venture to participants in the joint venture[1] are treated as if they are not taxable supplies. Rather, subsection 51-30(2) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) operates only in respect of supplies made by the entity in its capacity as joint venture operator to a participant in its capacity as a participant in the joint venture.

Explanation

2. Subsection 51-5(1) provides that the Commissioner must approve 2 or more entities as the participants in a GST joint venture if certain requirements are satisfied. These include a requirement that the application nominates one of those entities, or another entity, to be the joint venture operator of the joint venture (paragraph 51-5(1)(e)).

3. Subsection 51-30(2) provides that a supply that the joint venture operator of an approved GST joint venture makes is treated as if it were not a taxable supply if:

(a) it is made to another entity that is a participant in the joint venture; and

(b) the participant acquired the thing supplied for consumption, use or supply in the course of the activities for which the joint venture was entered into.

4. We consider that subsection 51-30(2) does not apply to *all* supplies made by an entity that is nominated as the joint venture operator to an entity that is a participant in the

[1] GSTR 2004/2 gives the Commissioner's views on what is a joint venture for GST purposes. GSTR 2004/3: *arrangements of the kind described in Taxpayer Alert TA 2004/2: Avoidance of GST on the sale of new residential premises* is an example of the application of aspects of those views.

joint venture. In particular, it does not apply to supplies that are made by the entity in a capacity other than as joint venture operator or that are made to an entity in a capacity other than as a participant in the joint venture.

Example

5. *The participants in a joint venture obtain part of their shares of the product or output of the joint venture, such as the coal extracted in a mining joint venture during a particular period. Subsequently, an entity which is one of the participants in the joint venture and is nominated as the joint venture operator, sells part of its share of the product to another entity, which is also a participant in the joint venture.*

6. *While the entity making the supply may be nominated as the joint venture operator, the supply is not made by the entity in its capacity as joint venture operator. Rather, it is made by the entity in its own right in the course of its separate activity of selling coal obtained through the joint venture. Similarly, while the entity to which the supply is made is a participant in the joint venture, the supply is not made to that entity in its capacity as a participant. Rather, the entity obtains the coal for the purpose of its own separate activity of selling or using the coal.*

7. *Accordingly, subsection 51-30(2) does not apply to the subsequent supply in these circumstances. If the requirements of subsection 9-5 are satisfied, the subsequent supply is a taxable supply.*

8. Division 51 may be contrasted with Division 48, which provides rules for streamlining GST reporting obligations for entities that are approved as a GST group. Under Division 48, a GST group is effectively treated as a single entity for certain purposes.[2]

9. Section 48-1 is similarly worded to section 51-1 but goes on to state '…and (in most cases) intra-group transactions are excluded from the GST'. These additional words in section 48-1 are not reflected in section 51-1. If Division 51 had been intended to have a similar effect to the grouping provisions in Division 48, it is to be expected that similar provisions would be found in Division 51.

10. Subsection 48-40(2) provides that where an entity makes a supply to another member of the same GST group, the supply is treated as if it were not a taxable supply. As Division 51 does not contain an equivalent provision, it follows that the legislation contemplates that it is possible to have taxable supplies between entities that are participants in a GST joint venture.

11. The *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999* removed the former requirement that all joint venture participants must have the same tax periods. The Explanatory Memorandum to the Act states: 'As a joint venture is not like a GST group where the group is treated as a single entity this is not necessary'.[3] The

[2] See also Explanatory Memoranda to the A New Tax System (Goods and Services Tax) Bill 1998, paragraph 6.7 and to the A New Tax System (Indirect Tax and Consequential Amendments) (No. 2) Bill 1999, paragraph 1.17.

[3] Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999, paragraph 1.101.

inference from this statement is that a GST joint venture is not to be treated as a single entity in the way that GST groups are treated as a single entity for certain purposes.

12. In the context of subsection 51-30(2), the relevant supply is made by the entity in its capacity as joint venture operator. It is only supplies made by an entity in this capacity that are made by the joint venture operator for the purposes of subsection 51-30(2).

13. In accordance with this interpretation of subsection 51-30(2), all supplies by joint venture participants, in their capacity as participants, made to other participants are afforded the same GST treatment under the normal rules. In particular, the supply is a taxable supply if it satisfies the requirements for a taxable supply under section 9-5 of the GST Act.

Alternative view

14. There is an alternative view that subsection 51-30(2) covers all supplies made by an entity nominated as the joint venture operator to an entity which is a participant in the joint venture. Support for this view is said to be found in the unqualified statement in the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 at paragraph 6.25 that '[s]upplies made by the joint venture operator to another participant of the GST joint venture are not treated as being subject to GST'.

15. The Commissioner's view is that, just as subsection 51-30(2) must be read in its context, so too should this statement. To give it the unqualified meaning suggested by the alternative view would mean that supplies having no connection with the joint venture would be covered by subsection 51-30(2). The Commissioner considers that is unlikely to have been Parliament's intention.

Date of effect

16. This Determination explains our view of the law as it applied from 1 July 2000. You can rely upon this Determination on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

17. If this Determination conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of effect of the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation
7 April 2004

Previous draft:
GSTD 2003/D2

Related Rulings/Determinations:
GSTR 1999/1; GSTR 2004/2; GSTR 2004/3

Subject references:
- joint venture
- GST joint venture

Legislative references:
- TAA 1953 37
- ANTS (GST)A99 9-5
- ANTS (GST)A99 Div 48
- ANTS (GST)A99 48-1
- ANTS (GST)A99 48-40(2)
- ANTS (GST)A99 Div 51
- ANTS (GST)A99 51-1
- ANTS (GST)A99 51-5(1)
- ANTS (GST)A99 51-5(1)(e)
- ANTS (GST)A99 51-30(2)
- A New Tax System (Indirect Tax and Consequential Amendments) Act 1999

ATO references
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